

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

| | | |
|------------------------------|---|----------------------------|
| TUIKA M. FAUMUINA, |) | CIVIL NO. 06-00207 DAE-LEK |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| BEST WESTERN, doing business |) | |
| as The Plaza Hotel, |) | |
| |) | |
| Defendant. |) | |
| |) | |

**FINDINGS AND RECOMMENDATION THAT
CASE BE DISMISSED WITHOUT PREJUDICE**

Pro se plaintiff Tuika M. Faumuina ("Plaintiff") filed the instant employment discrimination action on April 18, 2006. Defendant Best Western, doing business as the Plaza Hotel ("Defendant"), was personally served with the complaint and summons on July 20, 2007. Defendant did not file an answer. On October 15, 2007, this Court granted Plaintiff's oral request for entry of default and Plaintiff indicated that he would be filing a motion for default judgment. Default was entered on October 16, 2007.

Plaintiff did not file his motion for default judgment, nor did he file anything else in this case. On September 30, 2008, this Court issued an Order to Show Cause, ordering Plaintiff to appear on October 14, 2008 to show good cause why the complaint should not be dismissed for failure to prosecute. Plaintiff appeared at the October 14, 2008 order to show cause

hearing and this Court instructed him to file his motion for default judgment by October 28, 2008. The Court cautioned Plaintiff that the failure to do so would result in the dismissal of the action. On October 28, 2008, Plaintiff requested a two-week extension to file his motion. This Court granted Plaintiff's request on October 30, 2008 and gave him until November 13, 2008 to file his motion for default judgment. Plaintiff, however, has not filed his motion, nor did he request another extension.

This Court therefore FINDS AND RECOMMENDS that Plaintiff's complaint be DISMISSED WITHOUT PREJUDICE for failure to prosecute. See Fed. R. Civ. P. 41(b) ("If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.").

IT IS SO FOUND AND RECOMMENDED.

DATED AT HONOLULU, HAWAII, November 19, 2008.



/S/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States Magistrate Judge

TUIKA M. FAUMUINA V. BEST WESTERN; CV NO 06-00207 DAE-LEK;
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PREJUDICE